

DEC 11 2007

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Jim Feldkamp for Congress and Patricia) MUR 5724
Siegmond, in her official capacity as treasurer;)
James L. Feldkamp;)
Phyllis Feldkamp)

GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED

1. Find reason to believe that Phyllis Feldkamp violated 2 U.S.C. § 441a(a)(1)(A) and (a)(3) by making an excessive contribution to Jim Feldkamp for Congress in the amount of \$34,780; find reason to believe that Phyllis Feldkamp knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A) and (a)(3) by making an excessive contribution to Jim Feldkamp for Congress in the amount of \$75,000.

2. Find reason to believe that James L. Feldkamp knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting an excessive contribution in the amount of \$75,000.

3. Find reason to believe that Jim Feldkamp for Congress and Patricia Siegmund, in her official capacity as treasurer, knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 434(b) by accepting and improperly reporting an excessive contribution in the amount of \$75,000.

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II. BACKGROUND

On December 14, 2006, the Commission found reason to believe that James Lee Feldkamp, a candidate for Oregon's 4th Congressional District seat in 2004, violated 2 U.S.C. §§ 441a(f) and 441b(a), and that Jim Feldkamp for Congress and Patricia Siegmund, in her official capacity as treasurer, (the "Committee") violated 2 U.S.C. §§ 441a(f), 441b(a) and 434(b) in connection with three loans totaling \$77,500 that Feldkamp made to his campaign, which appeared to have been funded with excessive and/or prohibited contributions.

At the time of the Commission's findings, it appeared that Feldkamp's mother, Phyllis Feldkamp, may have been the source of the loans. In response to the complaint, James Feldkamp had asserted that he had sufficient personal funds to make the loans and pointed to various sources of income, including, *inter alia*, regular monetary gifts from his mother, Phyllis Feldkamp, "for events such as his birthday or Valentine's Day, or larger so-called lifetime gifts" over the past 15 years.¹ Further, the Committee's FEC disclosure reports revealed that on September 16, 2004, the Committee refunded an excessive contribution in the amount of \$34,780 from Phyllis Feldkamp upon the instructions of the Reports Analysis Division ("RAD").² See Request for Additional Information, dated August 17, 2004, *see also* FGCR at note 1. However, because the complaint did not specifically allege that Phyllis Feldkamp was the source of the

¹ James Feldkamp's response to the complaint included a list of the gifts that he received from his mother since 1990, which showed that since 1998, Feldkamp received an average of \$11,000 per year from Phyllis Feldkamp.

² This contribution was made in the form of a loan in the amount of \$34,780 secured by the Phyllis Feldkamp Trust. Phyllis Feldkamp had made the \$34,780 loan to her son's campaign on March 22, 2004, and the Committee reported it as a loan from Phyllis Feldkamp on its disclosure reports. See 2004 Pre-Primary Report, Schedule C. In its correspondence with the Commission, the Committee claimed the excessive contribution was accepted "in error under the advisement of a former campaign consultant." FEC Miscellaneous Form 99, filed Sept. 16, 2004. At the time Phyllis Feldkamp made the loan to the Committee, she had already reached the direct contribution limit to the candidate for the 2004 election cycle by contributing \$2,000 to Feldkamp's primary campaign and \$2,000 for the general election. See 2003 Year-End Report, Schedule A.

1 funds, and because the response to the complaint suggested that the funds may have come from
2 another source, the Commission authorized an investigation to determine the source of the funds
3 Feldkamp used to finance the three loans to his campaign totaling \$77,500. *See* Corrected
4 Certification in MUR 5724, dated July 12, 2007.

5 In response to the Commission's reason to believe findings, Respondents reiterated their
6 earlier contention that Feldkamp had sufficient personal funds to make the loans, explaining that
7 they came from his personal bank account. Respondents did not, however, divulge the source of
8 those funds. Therefore, this Office undertook an investigation to ascertain the source of the
9 funds in Feldkamp's personal bank account.

10 **III. RESULTS OF INVESTIGATION**

11 Respondents submitted bank statements revealing that on September 30, 2004, James
12 Feldkamp deposited \$75,000 into his personal account. Immediately prior to this \$75,000
13 deposit, the account balance was approximately \$3,607, and the average daily balance in the
14 account for the preceding six months was \$5,617. On the same day of the \$75,000 deposit,
15 Feldkamp wrote a check to his Committee in the amount of \$30,000, followed by a wire transfer
16 of \$30,000 to the Committee on October 8, 2004, and another check to the Committee on
17 October 15, 2004, in the amount of \$17,500.³ After this third transaction, his daily balance
18 dropped to \$2,043. After protracted discussions with Respondent's counsel regarding the source

³ The Committee reported receiving the funds on September 30, 2004; October 6, 2004; and October 26, 2004, and described them on Schedule A of its reports as the "candidate's personal funds." *See* 2004 October Quarterly Report (amended); 2004 Pre-General Report (amended); 2004 Post-General Report (amended). The Committee also reported that its total receipts as of the date of the 2004 general election was \$593,918.58, which included the \$112,280 (\$77,500 + \$34,780) that the Committee categorized as "loans made or guaranteed by the candidate." *See* 2004 Post-General Report (amended).

1 of the funds used to make the \$75,000 deposit, we learned that the funds were provided to
2 Feldkamp by his mother, Phyllis Feldkamp, via a check dated September 29, 2004. The memo
3 line of the check notes that it was a "gift from Phyllis." Attachment 1.

4 After we discovered that James Feldkamp's mother was the source of the funds, we
5 notified her by letter ("pre-RTB notification letter") that this Office had obtained information
6 indicating that she may have violated the Act in connection with the \$34,780 loan to the
7 Committee in March 2004 and the \$75,000 check to James Feldkamp in September 2004. We
8 informed her that we were reviewing the information for the purpose of making a
9 recommendation to the Commission as to whether there is reason to believe that there was, in
10 fact, a violation and provided her with an opportunity to submit any relevant information or
11 documentation.

12 Phyllis Feldkamp's response generally denies that she violated the Act and asserts that
13 Commission precedent with respect to family contributions is contradictory, citing the differing
14 outcomes in MUR 5138 (Ferguson) and MUR 5321 (Robert). The accompanying sworn affidavit
15 states that "[o]ver the years, Mrs. Feldkamp has provided her sons and their families with over
16 one million dollars in support and gifts. The amounts of the gifts to each of her sons over the
17 years have ranged from approximately \$2,000 to \$160,000." See Phyllis Feldkamp Response at
18 2; Phyllis Feldkamp Affidavit at ¶ 4. Neither the response nor the affidavit specifically addresses
19 the \$34,780 loan to the Committee in March 2004 or the \$75,000 check to James Feldkamp in
20 September 2004.

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1 **IV. ANALYSIS**

2 Under the Federal Election Campaign Act of 1971, as amended ("the Act"), any gift,
3 subscription, loan, advance, or deposit of money or anything of value made by any person for the
4 purpose of influencing any election for Federal office is a contribution. 2 U.S.C. § 431(8)(A)(i).
5 No persons, including family members, may make contributions to any candidate or his or her
6 authorized political committee with respect to any election for Federal office that exceeds
7 \$2,000, and no individual may aggregate contributions to political candidates and committees in
8 excess of \$37,500 in any calendar year.⁴ 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3). The Act also
9 prohibits any candidate or political committee from knowingly accepting an excessive
10 contribution. 2 U.S.C. § 441a(f).

11 A candidate for Federal office may make unlimited expenditures from personal funds.
12 11 C.F.R. § 110.10. The Commission defines the "personal funds of a candidate" as, *inter alia*,
13 all assets in which a candidate has legal title or an equitable interest, as well as salary and other
14 earned income from bona fide employment; dividends and proceeds from the sale of the
15 candidate's stocks or other investments; bequests to the candidate; income from trusts
16 established before candidacy; income from trusts established by bequest after candidacy of which
17 the candidate is the beneficiary; gifts of a personal nature which had been customarily received

⁴ In *Buckley v. Valeo*, 424 U.S. 1, 51 n.57 (1976), the Supreme Court emphasized that the legislative history of the Federal Election Campaign Act of 1971 supports applying the same contribution limits to members of a candidate's immediate family as apply to the general public. The Court opined that, "Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors." *Id.* at 53 n.59.

1 prior to candidacy; and proceeds from lotteries and similar legal games of chance. 2 U.S.C.

2 § 431(26); 11 C.F.R. § 100.33.

3 As noted in Phyllis Feldkamp's response to our pre-RTB notification letter, the
4 Commission has, in previous enforcement matters, considered the issue of whether candidate
5 contributions that were financed by funds received from a member of a candidate's family were
6 the personal funds of the candidate. *See, e.g.*, MUR 5138 (Ferguson); MUR 5321 (Robert). In
7 these matters, the Commission looked at the historical pattern of gift-giving between the
8 parent(s) and child to ascertain whether the gift in question was similar to those "customarily
9 received prior to candidacy." *See* 11 C.F.R. § 100.33. In MUR 5138 (Ferguson), the
10 Commission found probable cause to believe that Ferguson's parents had made, and Ferguson
11 and his principal campaign committee accepted, an excessive contribution when Ferguson used
12 money given to him by his parents for his campaign. Respondents argued that Ferguson's
13 parents had a history of giving their son numerous monetary gifts, but the Commission based its
14 finding on a factual determination that the specific gift Ferguson used for his campaign was an
15 "outlier" that appeared to have been made expressly to assist their son's Federal Congressional
16 campaign.

17 In contrast, in MUR 5321 (Robert), the Commission took no further action when
18 presented with the question of whether an \$800,000 gift to Robert from her mother during her
19 campaign was made for the purpose of influencing a Federal election, or was part of a
20 "longstanding pattern of comparable gift-giving by the mother to all of her children" for estate
21 planning purposes. Among the facts considered by the Commission was that the candidate and
22 her nine siblings had received substantially similar amounts of money from their mother in the

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1 past, and that all ten siblings received an equal \$800,000 gift from their mother at the same time
2 as the candidate.⁵ See Statement of Reasons of Commissioner Scott E. Thomas, July 7, 2004;
3 Statement of Reasons of Chairman Bradley A. Smith and Commissioner Michael E. Toner, July
4 27, 2004; Statement of Reasons of Chairman Bradley A. Smith, dated July 6, 2004; Statement of
5 Reasons of Commissioner David M. Mason, July 13, 2004.⁶

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⁵ The Commission took no further action after splitting 3-3 on whether to engage in pre-probable cause conciliation with the Respondents.

⁶ See also AO 1988-7 (where an undeclared candidate had received an annual gift of \$20,000 from his parents for the three years preceding his potential candidacy, the gift established a "repetitious custom of monetary gifts" without regard to the requester's possible candidacy for Federal office, and, therefore, the receipt of another \$20,000 cash gift under similar circumstances during the requester's candidacy would constitute the personal funds of the candidate).

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1 In the present matter, it appears that the entirety of the \$34,780 loan that Phyllis
2 Feldkamp made to her son's campaign on March 22, 2004, was an excessive contribution to the
3 Committee. *See* 2 U.S.C. § 441a(a)(1)(A) and (a)(3). The Committee acknowledged that the
4 loan was an excessive contribution that had been accepted "in error." As a result, six months
5 after the loan was made, the Committee refunded the full amount to Phyllis Feldkamp.
6 Therefore, we recommend that the Commission find reason to believe that Phyllis Feldkamp
7 violated 2 U.S.C. § 441a(a)(1)(A) and (a)(3) by making an excessive contribution to the
8 Committee in the amount of \$34,780.⁸

9 In addition, it appears that the \$75,000 check from Phyllis Feldkamp resulted in an
10 excessive contribution in violation of 2 U.S.C. § 441a(a)(1)(A) and (a)(3) when James Feldkamp
11 made loans to his campaign with those funds. Respondents argued in response to the complaint
12 that the candidate had received numerous gifts from his mother over the past fifteen years on his
13 birthday and Valentine's Day, as well as a few larger "lifetime gifts." *See* Respondents'
14 Response to the Complaint, May 10, 2006 ("Initial Response"); *see also* First GCR at 3-4. As
15 such, Respondents claimed that if Phyllis Feldkamp had given the candidate money, it would
16 have fit into the "long-standing pattern of giving" recognized by the Commission as being
17 personal funds of the candidate and not subject to the contribution limits of the Act.

⁸ With respect to the Committee, the Commission previously found reason to believe that the Committee violated 2 U.S.C. § 441a(f) based upon the recommendations contained in the First General Counsel's Report. *See* Corrected Certification in MUR 5724, dated July 12, 2007. Therefore, we are not making any new recommendations as to the Committee regarding the \$34,780 loan.

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1 However, the available information indicates that a cash gift in the amount of \$75,000
2 does not fit into the "long-standing pattern of giving" established between Phyllis Feldkamp and
3 her son. First, the Initial Response makes no mention whatsoever of the \$75,000 check and does
4 not include it in the list of gifts from Phyllis Feldkamp to the candidate that Respondents claim
5 establish the "pattern of giving." See Initial Response at 3. In fact, Respondents did not divulge
6 the existence of the \$75,000 gift until several months into the investigation despite repeated
7 requests that Respondents identify the source of the loan funds. Furthermore, with only two
8 exceptions that do not come close to \$75,000, Phyllis Feldkamp has given her son an annual cash
9 gift of only \$10,000 or \$11,000 in the ten years preceding the 2004 election, as shown below:

Date	Type	Amount
07/01/1990	Stock	\$8,296.50
03/25/1991	Stock	\$10,000.00
04/01/1991	1% share of business	\$10,000.00
05/20/1993	Stock	\$182,895.00
02/14/1994	Cash	\$10,000.00
02/14/1995	Cash	\$10,000.00
05/02/1996	Cash	\$10,000.00
12/24/1996	Cash	\$24,438.33
07/08/1998	Cash	\$10,000.00
02/09/2000	Cash	\$10,000.00
01/29/2001	Cash	\$10,000.00
08/02/2001	Cash	\$15,000.00
02/05/2002	Cash	\$10,000.00
02/14/2003	Cash	\$10,000.00
02/14/2004	Cash	\$11,000.00
09/29/2004	Cash	\$75,000.00
01/26/2005	Cash	\$11,000.00
04/03/2006	Cash	\$11,000.00
2007	Cash	\$11,000.00

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11 Thus, the pattern that Phyllis Feldkamp established with respect to her gifts to James Feldkamp
12 was an annual gift of \$10,000 or \$11,000, an amount well below the \$75,000 gift at issue here.

1 In fact, as reflected on the chart above, the \$75,000 check is the second largest gift that Phyllis
2 Feldkamp gave to her son in the past sixteen years, and is by far the largest cash gift. Although
3 Phyllis Feldkamp's submission asserts that she has provided monetary gifts to all three of her
4 sons over the years, neither her response nor her affidavit claims that she made similar
5 allocations to her other two sons at the time she gave James Feldkamp \$75,000 in September
6 2004. Thus, it does not appear that the \$75,000 check that Phyllis Feldkamp gave to James
7 Feldkamp on September 29, 2004, was the "personal funds" of James Feldkamp for purposes of
8 the Act. *See* 2 U.S.C. § 431(26); 11 C.F.R. § 100.33.

9 Further, _____ Feldkamp's bank records show that but
10 for the \$75,000 loan from the candidate's mother, James Feldkamp did not have sufficient funds
11 in his bank account to make the three loans in question to his campaign. In fact, with an average
12 daily account balance of \$5,617 prior to the \$75,000 deposit, Feldkamp did not have sufficient
13 funds to make *any* of the three loans. Thus, it appears that Feldkamp used the entire \$75,000
14 amount to make the \$77,500 in loans to his campaign, resulting in Phyllis Feldkamp making, and
15 James Feldkamp and the Committee receiving, an excessive contribution in the amount of
16 \$75,000. *See* 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f). Further, the Committee misreported the
17 loans on its disclosure reports as the personal funds of the candidate. *See* 2 U.S.C § 434(b).

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1 In total, it appears that Phyllis Feldkamp made contributions to the Committee in the
2 amount of \$113,780.⁹ As indicated in note 3, *supra*, her contributions to the Committee account
3 for almost 20% of the Committee's total receipts for the 2004 election cycle.

4 Based upon the information gathered during the investigation, it appears that, with respect
5 to the \$75,000 amount, Respondents' violation of 2 U.S.C. §§ 441a(f) and 434(b) and Phyllis
6 Feldkamp's violation of 441a(a)(1)(A) and (a)(3) was knowing and willful. The knowing and
7 willful standard requires knowledge that one is violating the law. The phrase "knowing and
8 willful" indicates that "acts were committed with full knowledge of all the relevant facts and a
9 recognition that the action is prohibited by law...." 122 Cong. Rec. H3778 (daily ed. May 3,
10 1976). An inference of knowing and willful conduct may be drawn "from the defendant's
11 elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-
12 15 (5th Cir. 1990). The evidence need not show that the defendant "had specific knowledge of
13 the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there were "facts
14 and circumstances from which the jury reasonably could infer that [the defendant] knew her
15 conduct was unauthorized and illegal." *Id.* at 213 (*quoting United States v. Bordelon*, 871 F.2d
16 491, 494 (5th Cir.), *cert. denied*, 493 U.S. 838 (1989)).

17 As previously discussed, *see* p. 2 *supra*, on September 16, 2004, in response to an RFAI
18 that put the Committee on notice that Phyllis Feldkamp had exceeded the contribution limit to
19 the candidate for the 2004 election cycle, the Committee refunded to Phyllis Feldkamp an

⁹ In addition to Phyllis Feldkamp's March 22, 2004 contribution to the Committee of \$34,780 and her \$75,000 contribution when Jim Feldkamp transferred funds to the Committee on September 30, 2004; October 8, 2004; and October 15, 2004, Phyllis Feldkamp also contributed \$4,000 to Jim Feldkamp for Congress on December 13, 2003, for a total of \$113,780. *See* note 2, *supra*.

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1 excessive contribution that she had made in the form of a \$34,780 loan secured by the Phyllis
2 Feldkamp Trust. Just thirteen days later, Phyllis Feldkamp wrote her son a check in the amount
3 of \$75,000, which she noted as a "gift," from the same account from which she had made the
4 original loan – the Phyllis Feldkamp Trust. The very next day, Feldkamp deposited the check
5 into his personal bank account (which, at the time had a balance of approximately \$3,607) and
6 wrote the first check to the Committee for \$30,000, which the Committee characterized as a loan
7 from the candidate's personal funds. This sequence of events indicates that Phyllis Feldkamp
8 may have given her son the \$75,000 check, and James Feldkamp may have routed the \$75,000
9 through his personal bank account, in an attempt to disguise the funds as "personal funds" and
10 circumvent the Act's contribution limitations after RAD informed the Committee that Phyllis
11 Feldkamp's direct loan to her son's campaign was an excessive contribution. Further, although
12 the Committee, through James Feldkamp, was aware that the funds were actually a contribution
13 from Phyllis Feldkamp, they accepted the contributions and misreported them as the "personal
14 funds of the candidate" in violation of 2 U.S.C. §§ 441a(f) and 434(b).

15 Therefore, we recommend that the Commission find reason to believe that Phyllis
16 Feldkamp knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) by making an
17 excessive contribution to the Committee in the amount of \$75,000. Furthermore, we recommend
18 that the Commission find reason to believe that James L. Feldkamp knowingly and willfully
19 violated 2 U.S.C. § 441a(f) by accepting an excessive contribution in the amount of \$75,000; and
20 find reason to believe that Jim Feldkamp for Congress and Patricia Siegmund, in her official
21 capacity as treasurer, knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 434(b) by
22 accepting and improperly reporting an excessive contribution in the amount of \$75,000.

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VI. RECOMMENDATIONS

1. Find reason to believe that Phyllis Feldkamp violated 2 U.S.C. § 441a(a)(1)(A) and (a)(3) by making an excessive contribution in the amount of \$34,780;

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- 1 2. Find reason to believe that Phyllis Feldkamp knowingly and willfully violated
2 2 U.S.C. § 441a(a)(1)(A) and (a)(3) by making an excessive contribution in the
3 amount of \$75,000;
4
5 3. Find reason to believe that James L. Feldkamp knowingly and willfully violated
6 2 U.S.C. § 441a(f) by accepting an excessive contribution in the amount of \$75,000;
7
8 4. Find reason to believe that Jim Feldkamp for Congress and Patricia Siegmund, in her
9 official capacity as treasurer, knowingly and willfully violated 2 U.S.C. § 441a(f) and
10 434(b) by accepting and improperly reporting an excessive contribution in the amount
11 of \$75,000;
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13 5. _____
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17 6. Approve the attached Factual and Legal Analyses;
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19 7. _____
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21 8. Approve the appropriate letters.
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Thomasenia P. Duncan
General Counsel


12/6/07

Date

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